



25 W Main St—5th Floor, Suite 33
Madison, WI 53703

November 7, 2022

Concerns and Questions about New TDM Program

This memorandum contains Smart Growth's primary concerns and questions about the latest version of the proposed new Transportation Demand Management (TDM) program for Madison (the October 2022 version). Smart Growth appreciates that the latest version of the proposed TDM program includes changes made in response to some of the concerns voiced by Smart Growth.

Smart Growth raised some of the concerns in this memorandum with Transportation Department staff more than a year ago and has reiterated those concerns multiple times. Transportation Department staff and Smart Growth are continuing to work together in an effort to find solutions to these concerns.

Smart Growth raised some of the concerns in this memorandum more recently because only recently it became apparent that the new TDM program is intended to apply, under certain circumstances, to buildings constructed before the new TDM program is effective. Again, Transportation Department staff and Smart Growth are continuing to work together in an effort to find solutions to these concerns.

For your reference, this memorandum also contains a summary of the proposed new TDM program, based on the October 2022 version of the document containing the details of the program, following Smart Growth's concerns. The program summary starts on page 6 of this memorandum.

If you have questions about Smart Growth's concerns, please contact Bill Connors, Executive Director, at 608-228-5995 (mobile) or bill@smartgrowthgreatermadison.com.

Smart Growth's Concerns

Smart Growth's high-level concerns are as follows.

- The new TDM program will make it more challenging for developers to bring new business with good paying jobs to Madison.
- Residential and commercial tenants will pay higher rents to cover the costs imposed by the new TDM program.
- The new TDM program's positive impact will be modest because—
 - Many people who work in Madison live in areas where they have no practical access to transit or other shared transportation services, so they have no choice but to drive to their jobs. According to U.S. Census survey data from 2019 (the most recent data

available), 66.8% of the people whose work location is in the City of Madison live outside the city. (Conversely, 49.8% of the workers who live in the City of Madison have work locations outside the city.) See the report starting on page 11 of this document.

- The metro-area population densities and traffic congestion in other communities that have implemented TDM are much greater than the population density and traffic congestion in the Madison metro area. Unless and until it is faster to use transit rather than drive your own vehicle to and from work in Madison, commuters will continue to drive to and from work.
- The Madison metropolitan area does not have a robust regional transit system, whereas other cities that have implemented TDM are in metropolitan areas that have robust regional transit systems.
- The new TDM program does not apply to all major employers, as TDM programs in some other communities do.
- The new TDM program's encouraging building owners to require employees working in their buildings (usually employees of their commercial tenants) to pay to park at work will be a hardship on people such as single parents, who must drive to work because they must drop off their kids at day care or school on the way to work and pick them up after work, regardless of whether transit is available to them.
- The new TDM program's encouraging building owners to require employees working in their buildings (usually employees of their commercial tenants) to pay to park at work will exacerbate the challenges Madison businesses are experiencing to hire and retain employees, because many current and potential new employees who live where transit is not available will choose to work where there is no charge to park at work.
- Concerns about how to avoid triggering the application of the new TDM program to existing buildings or managing the situation if it is triggered will delay the leasing of open commercial space on the ground floors of mixed-use buildings, resulting in decreased in street-level activity.

Smart Growth's other primary concerns are as follows.

In a proposed large multi-tenant employment-use building (or a mixed-use building where most of the space will be occupied by multiple tenants with employment uses, e.g., general office uses), it is unlikely that the TDM plan will contain the required points unless the plan includes one of the following high-point-value TDM mitigation measures, and none of these are workable in this situation: (a) offer complimentary monthly transit passes, (b) parking cash-out, (c) unbundle parking or (d) market-rate parking fees.

- In this situation, the employees who work in the building are employees of the commercial tenants, not employees of the developer or building owner.
- The program is written with the assumption that the building owner can compel employers/tenants to implement TDM mitigation measures for the commercial tenants' employees.
- The competition between developers for commercial tenants is intense and the amount of future demand for commercial space is uncertain in the aftermath of the COVID-19 pandemic.

Consequently, developers/building owners cannot dictate lease terms to potential commercial tenants.

- Commercial tenants are in a battle for talent, and providing parking at no cost to their employees in areas of the city where the prevailing practice is to charge for parking is an attractive benefit. Potential commercial tenants will be reluctant to sign leases if those leases do not include parking spaces for their employees without charging the employees to park.
- If the developer/building owner's TDM plan includes unbundled parking in an area of the city where the prevailing practice is to charge for parking, the developer/building owner has no practical way to prevent commercial tenants from reimbursing their employees for parking fees. If the employers/commercial tenants reimburse their employees for the parking fees, there will be no incentive for the employees not to drive to and from work. Even if a commercial tenant were to agree not to do so in a lease, which is unlikely, there would be no way for the developer/building owner to know whether a commercial tenant had increased compensation for their employees to cover the cost of parking.
- In areas of the city where the prevailing practice is not to charge for parking at office buildings, it is not practical for a developer of a new office building to include TDM mitigation measures that involve charging for parking in its TDM plan because of competitive concerns.
- The parking cash-out TDM measure is not workable in "Suburban environments" within the city, where the prevailing practice is not to charge for parking at office buildings, because—
 - The developer/building owner of a multi-tenant office building cannot administer this TDM measure for the employees of the commercial tenants.
 - Many potential commercial tenants will be unwilling to administer this TDM measure.
 - There would be no gate at the entrances to the parking facility to prevent employees of commercial tenants who have accepted parking cash-outs to drive to work and park in the parking facility.
 - It is extremely unlikely that a developer/building owner would be willing to take on the responsibility to attempt to identify and vehicles that are improperly parked in the parking facility because they belong to employees of commercial tenants who have accepted parking cash-outs.
 - There is nothing to stop employees of commercial tenants who have accepted parking cash-outs from driving to work and parking in the parking facility of a nearby building (or parking on the street where that is permitted).
- A developer/building owner must recover from its commercial tenants the cost of offering monthly transit passes (with administrative assistance from the commercial tenants) to the employees of the commercial tenants in order for the building project to work financially, and many potential commercial tenants will be unwilling to agree to such a provision in their leases.
- Many other metro areas and other cities and villages in Dane County do not impose on commercial tenants the obligation to implement TDM mitigation measures for their employees.
- It will be extremely challenging for a developer to obtain the commitments from commercial tenants needed to obtain financing to construct a multi-tenant office building when the developer must attempt to persuade potential tenants to agree to perform TDM mitigation measures during lease negotiations or refuse to include no-charge parking for the tenants' employees in their leases.

- If financing is obtained and the new multi-tenant office building is constructed, it will be extremely challenging for the building owner to find commercial tenants to lease up the rest of the space in the building when the building owner must attempt to persuade potential tenants to agree to perform TDM mitigation measures during lease negotiations and/or require the potential tenants' employees to pay for parking.
- It will be extremely challenging for a building owner to keep a building leased up when existing commercial tenants can be lured away when their leases expire to other metro areas or other cities or villages in Dane County where commercial tenants are not required to perform TDM measures and building owners can include in leases parking at no charge to the tenants' employees.
- The negative impact of the TDM program on the ability to retain tenants and sign new tenants to leases will make it more challenging for building owners to refinance mortgages.
- The processes to seek a reduction in TDM points that is provided for existing buildings that become subject to the new TDM program is not available for buildings constructed after the new TDM ordinance is effective.
- Smart Growth questions how the city government has legal authority to essentially require developers and building owners, during lease negotiations, to attempt to persuade potential tenants to agree to lease provisions that must be performed by the tenants in order for the building owner to have enough points in its TDM plan to meet the requirements of the new TDM program, and to fine the developers and building owners if the tenants refuse.

If a new commercial tenant in a building that existed on the effective date of the new TDM ordinance (the ordinance will be effective six months after publication) has a use that falls into a different use or sub-use category than the departing tenant's use, the new TDM program will apply to that tenant space. In many cases, it will be extremely challenging to produce a TDM plan for that tenant space which contains enough TDM points. For example, if part of a building that was used for professional or general office is changed to a research laboratory or vice versa in response to available tenants, or if part of an existing building that was used for a retail shop is changed to a restaurant or vice versa in response to available tenants, the owner of the existing building would be required to submit a TDM plan for the tenant space where the new use is located.

- Many of the TDM measures involve physical improvements to the building or site (or nearby area), and those will be more expensive or impractical to retrofit in existing buildings and sites.
- The owner of an existing building cannot relocate the building to be nearer to transit or shared transportation services in order to obtain TDM points and the building owner does not have the power to bring these services nearer to the existing building if the service providers chooses not to locate there.
- If an existing building has no controls on entering the parking lot or structure to enable charging for parking, the building owner cannot block off part of the parking lot or structure and require employees of the new tenant to pay to park in the separate parking area.
- In many cases, the owner of an existing building will not be able to assemble a TDM plan that even comes close to containing the required number of TDM points, which will put the building owner in the position of choosing between two harmful options, either (a) passing up on the opportunity to lease space to a new commercial tenant if doing so would change or expand a

sub-use in the building or (b) leasing space to the tenant and being subject to fines for not being able to submit a TDM plan that contains the required number of points.

- Uncertainty for owners of existing buildings and potential commercial tenants will be created when building owners must put potential tenants “on hold” while they seek a reduction in required TDM points from Transportation Department staff or the Transportation Commission (predictable requirements are supposed to be one of the advantages of the new TDM program). Many commercial lease deals are time sensitive, and building owners will lose many potential tenants if they attempt to put them on hold while they seek a reduction in TDM points.
- There will be less street-level activity in Madison. Owners of mixed-use buildings will be reluctant to fill vacant ground-floor commercial space with a new tenant if that new tenant would be a new or enlarged sub-use, which would trigger application of the new TDM program to the tenant space-- unless the building owner can obtain a large enough reduction in TDM points to be able to submit a TDM plan that city staff will approve and the potential tenant will wait for the completion of that process. Often the potential tenant will not wait.
- The inclusion of the word “impossible” in the standard which Transportation Department staff will use to determine whether to grant a reduction in TDM points means reductions will rarely if ever be granted.
- Smart Growth questions how the city government has legal authority to require the owner of an existing building to construct improvements qualifying for TDM points or to impose on potential commercial tenants, during lease negotiations, the obligation for the commercial tenants to perform TDM mitigation measures when the building owner attempts to replace an existing tenant with a new tenant and the use by the new tenant complies with the existing zoning.

It appears that the TDM mitigation measures and the points assigned to each mitigation measure will not be in the ordinance enacting the new TDM program, but instead will be in a separate program document, enabling the Transportation Commission to change the mitigation measures and points assigned to each measure over time without approval by the Common Council. This flexibility creates the potential for hardship to owners of buildings subject to the new TDM program.

- In the future, the Transportation Commission could reduce the points given for physical improvements a developer constructed to obtain points in the TDM plan, forcing the building owner to find and implement new (likely programmatic) TDM mitigation measures to replace the points the Transportation Commission took away.

Smart Growth’s questions are as follows.

- For commercial, employment and institutional uses, a tenant space is exempt from having a TDM plan if the number of shared parking spaces allocated to that tenant space for purposes of the new TDM program is less than a number multiplied by the minimum parking requirement (Base Parking or BP) (except employment-use spaces under 10,000 sq ft are exempt regardless parking). If there is no minimum parking requirement for that use in that location (e.g., it is located in the Transit-Oriented Development Overlay District, which probably will eliminate minimum parking requirements), is the result that if even one parking space is allocated to that tenant space, the tenant space is not exempt? ANSWER: According to Philp Gritzmacher, the minimum parking requirements for purpose of the TDM program are specified in the TDM

program document, so it does not matter if the minimum parking requirements in various ordinances change over time.

- Where can we find a comprehensive list of all of the sub-uses and definitions of the sub-uses referred to in the new TDM program? ANSWER: According to Philip Gritzmacher, the list of parking minimums in the TDM program document is the comprehensive list of sub-uses for purposes of the TDM program.
- In a building where many or all of the parking spaces in the facility can be used by the customers or employees of any of the commercial tenants, how does one determine how many parking spaces are allocated to each tenant space, so it can be determined whether that tenant space is exempt from the new TDM program based on how much the actual parking ratio exceeds the minimum parking ratio? ANSWER: According to Philip Gritzmacher, the developer/building owner must allocate on paper some number of the shared parking spaces to each tenant space for the purpose of determining whether one or more tenant spaces are exempt from the new TDM program.
- Two of the TDM measures refer to the “market rate cost of parking” and the “full market value for parking?” Does that mean the price that is charged for parking in that particular part of the city or the cost to construct and maintain the parking? Who decides what the market rate cost or market value is? ANSWER: According to Philip Gritzmacher, these phrases mean the prevailing fee for parking in a particular area of the city. He said it is up to the developer or property owner to demonstrate the prevailing fee, and if the prevailing fee in an area of the city is zero, a small charge for parking will be sufficient.
- If building owners knows a commercial tenant space will soon be vacant and is concerned that a potential new tenant might have a use that falls into a different use or sub-use category than the departing tenant, may the building owner apply to staff for a TDM point reduction so that the reduction is available if the actual new tenant would have a different use or sub-use? ANSWER: According to Philip Gritzmacher, no, the building owner must wait until it knows the potential new tenant and its use and then submit an application making a case it would be impractical to meet the TDM program requirements for that tenant and tenant space and hope that city staff will evaluate the application and grant the TDM point reduction before the potential tenant loses interest and moves on to a different property.
- What is the amount of the fee that must be paid with each TDM plan? ANSWER: According to Philip Gritzmacher, the amount of the fee has not yet been determined.

Summary of Proposed New TMD Program (based on the October 2022 program document)

Determining Number of TDM Points Required for a Building or Tenant Space

TDM requirements are assigned using a point-based system and depend on the development’s—

- land use(s),
- size,
- proposed parking capacity (parking ratio),
- and location.

Further, measures related to transit and share mobility will have their point values adjusted based on the proposed developments proximity to the service areas of those transportation options.

The TDM requirements for a proposed development can be determined by using the city-provided Transportation Demand Management Plan Creation Tool, which is an excel-based spreadsheet that automatically generates the TDM requirement and based on the aforementioned characteristics of the proposed use. One can download the spreadsheet at <https://www.cityofmadison.com/transportation/initiatives/transportation-demand-management/tdm-project-document> .

The tool can be used to identify mitigation measures and demonstrate compliance with the TDM ordinance.

For mixed-use or multitenant developments, TDM requirements for each are generally considered and met separately for each use or tenant space. However, uses may be considered together if mitigation measures for each use category are common across all uses or jointly between all uses. Measures being jointly implemented for the development can be counted towards the point target for each use, provided they are accessible for each use. Parking is allocated for all uses to determine use specific TDM targets. If parking is shared amongst the different uses, their respective parking maximums would be considered for determining their targets.

Once the raw TDM target has been determined, the value is multiplied by a location-based modifier. The location-based modifier seeks to acknowledge that different amounts of TDM measures are available and feasible within different locations of the city. As shown in the TDM Requirement Modifiers Map, projects located in the densest portions of the city are required to meet the highest TDM requirements. As development occurs further from the urban core, point requirements decline.

Examples:

Office Building in Downtown

- Location: 100 block of E. Main Street
- Use: Office
- Floor area: 110,000 sq. ft.
- Proposed parking capacity: 220 stalls
- Required TDM points: 19 (there is no location-based modifier for this location)
- Note: if the number of parking stalls is reduced to 210, the number of required TDM points is reduced to 15.

Office Building Near the Edge of Madison

- Location: The American Center east of I-90/94, north of USH 151
- Use: Office
- Floor area: 105,000 sq. ft.
- Proposed parking capacity: 493
- Required TDM points: 19 (raw points before the location-based modifier is 29)

- Note: It is much easier for the Office Building in Downtown to obtain 19 TDM points than the Office Building Near the Edge of Madison.

Residential Use Near Edge of Madison

- Location: 7400 block of Raymond Road
- Use: Residential (20 percent units at or below 60 percent of annual median income)—not a common scenario due to funding sources for income-based housing
- Number of dwelling units: 100
- Proposed parking capacity: 150 stalls
- Required TDM points: 14 (raw points before the location-based modifier is 22)

Mixed-Use Near Commercial Corridor

- Location: 2900 block of University Ave
- Use: Commercial (retail) on ground floor and Residential on upper floors
- Number of dwelling units: 50
- Commercial Floor area: 10,000 sq. ft.
- Proposed parking capacity: 110 stalls (residential: 70 stalls; commercial: 40 stalls)
- Retail parking minimum, or base parking: 25 stalls (1 per 400 sq. ft.)
- Required TDM points: 14 for Residential use and 15 for Commercial use (raw points before the location-based modifier are 15 for Residential use and 17 for Commercial use)

Creating a TDM Plan that Contains the Required Number of Points

The next step requires developers or building owners to choose TDM measures from a menu to meet the assigned point target. They would then need to prepare a TDM plan with descriptions of the selected measures and submit it for review and approval, along with a nominal fee to cover administrative review of the plan.

The TDM menu comprises of 43 measures in 9 categories – Active Transportation, Transit, Parking Management, Shared Mobility, Information & Communication, Delivery, Land Use, Employer Policies, and Other measures. Under each of these broad categories, there are multiple measures to choose from. Each measure is worth points ranging from one to ten, which are based on efficacy in reduction of vehicle miles traveled (VMT), documented best practices, cost of implementing the measure, and contextual relevance for Madison.

Some additional flexibility can be found in the “Other Innovative Measures” measure provided under the “Other Measures” category. Building owners can also propose any other TDM measure that is not on the list and propose a point value, based on the aforementioned rationale. They may then be awarded points at the discretion of the city staff.

Once the TDM plan is approved, building owners are required to implement the measures specified in their plans. Developments may also choose to enroll or participate in a Transportation Management Association for additional assistance with on-site TDM operations. The city will track and monitor

program implementation and set reporting requirements for developments, to ensure compliance with their respective TDM plans.

Ongoing Responsibilities Imposed on Building Owners, Including Imposing Requirements on Tenants

TDM Plans shall be recertified bi-annually, by resubmitting a TDM plan spreadsheet, along with nominal administrative fee, to the Department of Transportation. A separate administrative fee is required for each TDM plan. A single building might have multiple TDM plans (up to one TDM plan for each tenant space), so a developer/building owner might have to pay multiple TDM administrative fees for the same building. The amount of the TDM administrative fee has not yet been disclosed.

Because of the possibility for shared TDM amenities, zoning certificate applicants are generally responsible for ensuring TDM program compliance. Similar to building and zoning compliance issues, the zoning certificate applicant is responsible for non-compliance related to certification and/or recertification of TDM plans. These responsibilities and obligations may, however, be passed along to commercial tenants in lease agreements, if the zoning certificate applicant can find commercial tenants willing to agree to undertaking these responsibilities and obligations.

For “white box” developments, or multitenant developments for which one or more users have not yet been identified, the developer will be responsible for drafting and submitting the initial TDM plan. This plan should reflect the proposed or assumed occupant and contain mitigation measures demonstrating compliance with the plan. These can include both programmatic measures (which a potential tenant would be expected to implement if the developer can find a tenant willing to do so) as well as infrastructure-based measures (which the developer would be responsible for implementing at that time).

Buildings Constructed Before TDM Program Is Effective Can Become Subject to the Program

TDM requirements are applicable to all existing structures within the city that are expanded or for which—

- Uses change from one primary use category to another (e.g., changing from employment to commercial use)
- Sub-uses change from one category to another (e.g., commercial – retail to commercial restaurant)
- The total parking on the site is increased
- The primary structure in which the use takes place is expanded.
- The overall composition of uses on the site changes (e.g., a building with 50% employment and 50% commercial becomes 60% employment and 40% commercial)

For all existing structures in which uses or sub-uses do not change, the structure is not expanded, parking is not modified, or the overall composition of uses on the site does not change, the new TDM program requirements would not apply. Further, sites in which prior uses are reactivated are not subject to the new TDM requirements unless the structure and/or parking are expanded to accommodate this reactivation of use.

The new TDM ordinance will be effective six months after its publication of the ordinance. For purposes of the new TDM program, an existing building is one that existed before the effective date of the ordinance.

For existing properties brought into the TDM program that are unable to meet the mitigation point requirements for either cost of physical constraint reasons, the applicant may appeal to the Department of Transportation staff review for relief from up to five (5) mitigation points, which can be provided at the discretion of the staff member. These mitigation points should be considered a last resort, only provided if the applicant can demonstrate significant hardship making meeting TDM requirements impossible. If the applicant wishes to appeal the staff mitigation point reduction or requests further relief, they may request elevation of the relief request to the Transportation Commission. The applicant will be required to share the following information with the Transportation Commission: site information, required TDM mitigation point, proposed TDM mitigation measures, requested point reduction, rationale for reduction. The Transportation Commission will have the final determination on the point reduction. If staff and/or the Commission grant mitigation points reductions, these reductions will continue in perpetuity until uses are expanded, changed, or parking is modified.

U.S. Census Data about Madison Commuting Patterns

As mentioned above, the new TDM program's positive impact will be modest because many people who work in Madison live in areas where they have no practical access to transit or other shared transportation services, so they have no choice but to drive to their jobs. According to U.S. Census survey data from 2019 (the most recent data available), 66.8% (92,048) of the people whose work location is in the City of Madison live outside the city. Conversely, 49.8% (45,348) of the workers who live in the City of Madison have work locations outside the city.

The ongoing impact of the COVID-19 pandemic on workplace locations and commuting behavior will affect this data, but there is no updated Census data available. We do know that currently, there are substantially fewer people traveling to and from work in Downtown Madison each day, which has eased traffic congestion but is bad for Downtown businesses. The reduction in Downtown workers and traffic congestion and uncertainty of demand for office space when pre-COVID long-term leases expire are valid reason to delay implementation of the new TDM program.

See the report starting on the next page.

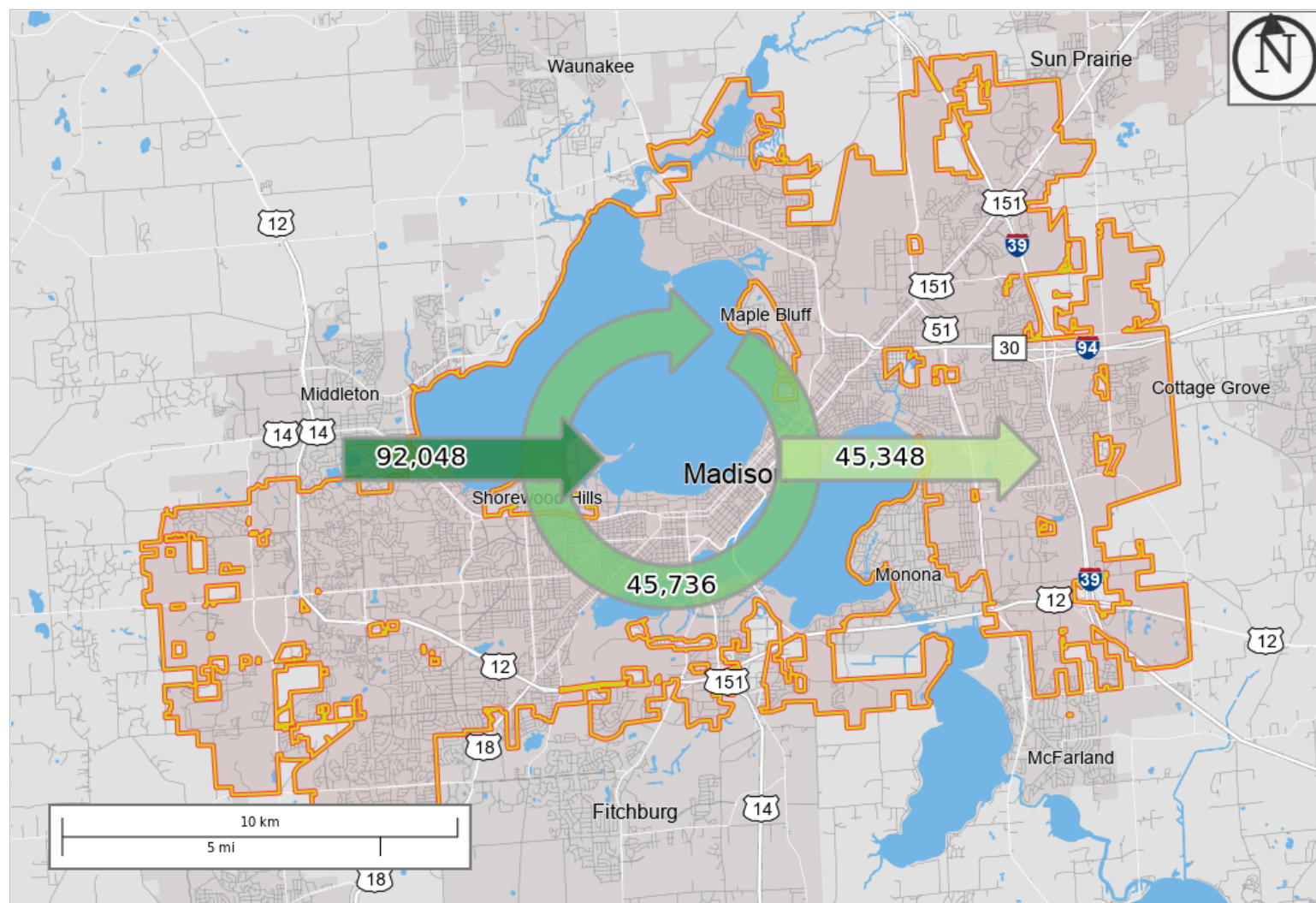
Inflow/Outflow Report

Private Primary Jobs for All Workers in 2019

Created by the U.S. Census Bureau's OnTheMap <https://onthemap.ces.census.gov> on 10/07/2022

Inflow/Outflow Counts of Private Primary Jobs for Selection Area in 2019

All Workers



Map Legend

Selection Areas

Analysis Selection

Inflow/Outflow

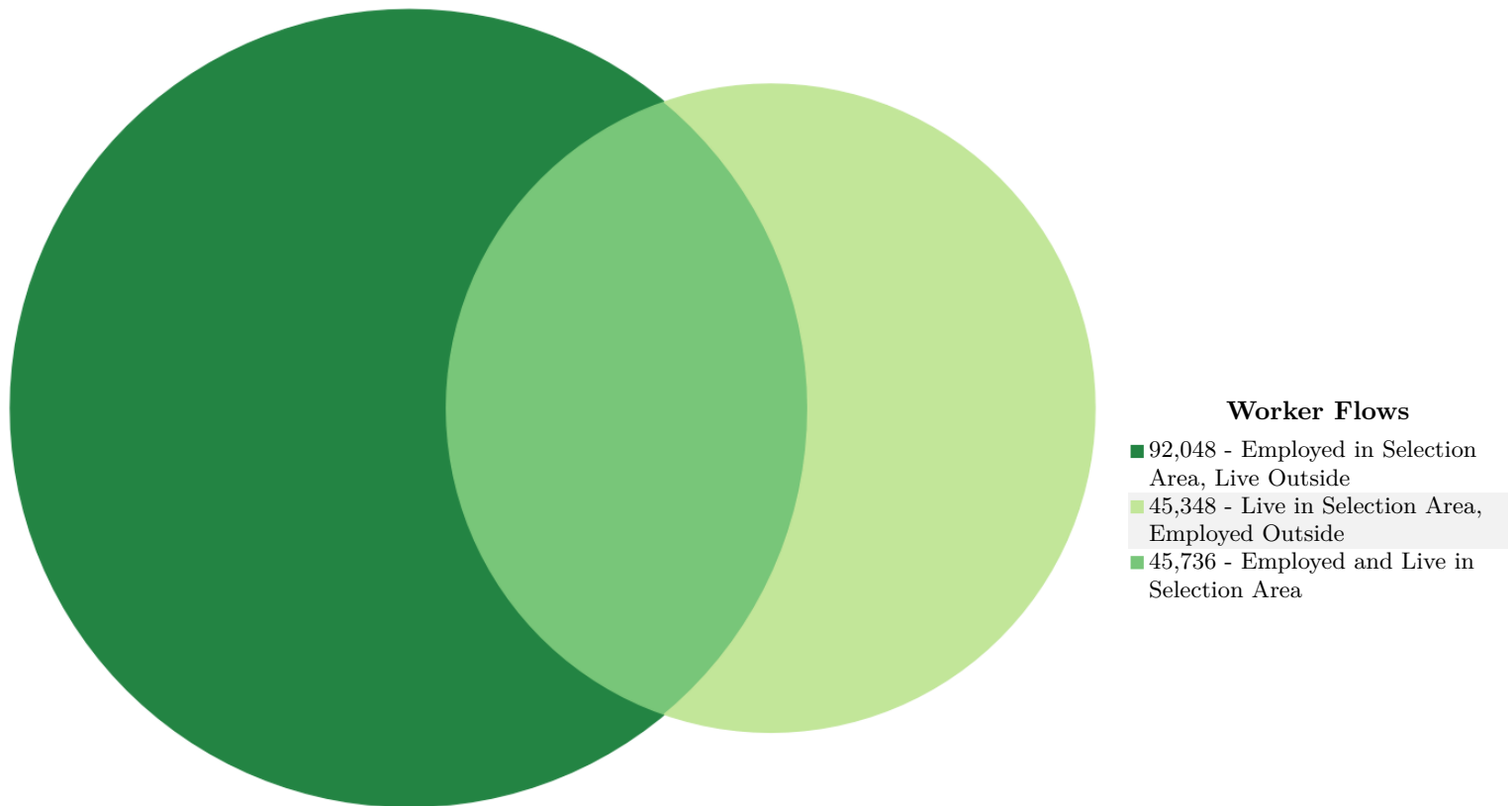
- Employed and Live in Selection Area
- Employed in Selection Area, Live Outside
- Live in Selection Area, Employed Outside

Note: Overlay arrows do not indicate directionality of worker flow between home and employment locations.



Inflow/Outflow Counts of Private Primary Jobs for Selection Area in 2019

All Workers



Inflow/Outflow Counts of Private Primary Jobs for Selection Area in 2019

All Workers

Worker Totals and Flows	2019	
	Count	Share
Employed in the Selection Area	137,784	100.0
Employed in the Selection Area but Living Outside	92,048	66.8
Employed and Living in the Selection Area	45,736	33.2
Living in the Selection Area	91,084	100.0
Living in the Selection Area but Employed Outside	45,348	49.8
Living and Employed in the Selection Area	45,736	50.2

Additional Information

Analysis Settings

Analysis Type	Inflow/Outflow
Selection area as	N/A
Year(s)	2019
Job Type	Private Primary Jobs
Selection Area	Madison city, WI from Places (Cities, CDPs, etc.)
Selected Census Blocks	4,090
Analysis Generation Date	10/07/2022 14:55 - OnTheMap 6.8.1
Code Revision	f9358819d46a60bb89052036516a1c8fe8bbbbeac
LODES Data Version	20211018_1647

Data Sources

Source: U.S. Census Bureau, OnTheMap Application and LEHD Origin-Destination Employment Statistics (Beginning of Quarter Employment, 2nd Quarter of 2002-2019).

Notes

1. Race, Ethnicity, Educational Attainment, and Sex statistics are beta release results and are not available before 2009.
2. Educational Attainment is only produced for workers aged 30 and over.
3. Firm Age and Firm Size statistics are beta release results for All Private jobs and are not available before 2011.